

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING -- November 16, 1966

Appeal No. 8991 Capitol Hill Restoration Society, appellant.

The Zoning Administrator of the District of Columbia, appellee.

On motion duly made, seconded and carried with Mr. William F. McIntosh not voting, the following Order was entered at the meeting of the Board on November 29, 1966.

EFFECTIVE DATE OF ORDER -- Feb. 21, 1967

ORDERED:

That the appeal from a decision of the Zoning Administrator given on April 26, 1966 ruling that premises 323 - 2nd Street, SE., Washington, D. C., lot 828, square 733, was a legal use as a 3 unit apartment house, be denied.

FINDINGS OF FACT:

(1) The subject lot is located in an R-4 District and is improved with a two-story brick building with basement. The lot has a 25.83 foot frontage on Second Street, SE. and contains approximately 2,599 square feet of land.

(2) On April 26, 1966 the Zoning Administrator ruled that the subject premises was a legal use as a three-unit apartment building. Pursuant to such ruling, the Administrator authorized issuance of Certificate of Occupancy No. B-56387 on November 8, 1966.

(3) The Capitol Hill Restoration Society described in Exhibit 40 as an organization consisting of a membership of over 500 property owners and residents of Capitol Hill, has challenged the Administrator's decision by filing this appeal.

(4) The Society representative described the issue as, "whether or not there has been a reversion to a single family dwelling so that they (the current owners) could not, without seeking a zoning variation, turn it into a three-unit apartment house."

(5) The Zoning Administrator describes as follows his investigation relative to the case: A certificate of occupancy application was brought to his office. The application was taken to the Central Permit Bureau where records are kept. That Bureau applied the following to the application:

"Previous use, apartment house all floors, T.R."  
and gave the number 104 T.O.

It was also indicated that the building was to be remodeled. Accordingly, the certificate of occupancy was withheld and sent to the fire safety section until there had been a determination that the property was in compliance with the 1961 Building Code.

There was no reason to question the application. The last available records were used and the permits were issued. The Administrator determined that the building was licensed as a three-unit apartment building and no determination was made as to how the building was actually occupied. In addition, it was reported that licenses are only maintained for a period of five years. The owners demanded a certificate of occupancy at the conclusion of the Zoning Administrator's findings. In the judgment of the Administrator, no legal basis existed for refusing issuance of the certificate of occupancy and its issuance was authorized on the 8th of November, 1966 on the basis of documents in the possession of the Administrator.

(6) By letter dated October 6, 1966 (Exhibit No. 35), the Director of the Department of Licenses and Inspections wrote the appellant stating that in his opinion the Zoning Administrator acted properly in the matter.

(7) The record indicates the following actions with reference to the subject property:

- (a) February 27, 1946, application for a certificate of occupancy for an apartment house. Stamped on the face of this application is the notation: "Occupied as apartment house under the License Act."
- (b) July 9, 1946, Certificate of Occupancy No. 104420 for "Rooming house under the building regulations."
- (c) Survey report indicating an inspection on April 16, 1946 showing that the subject building contained 4 bedrooms, 2 single bedrooms, 2 water closets, 2 showers or tubs, 2 basins, 2 sinks, 3 stoves, and one gas water heater.

- (d) July 20, 1950, Permit No. A-12574 to "Install plumbing and gasfitting, as per plan."
- (e) May 3, 1966, Building Permit No. 142521 to "Build partition in basement as per plans. Cut opening in first floor wall for door, all work to be done as per plans all interior work."
- (f) May 17, 1966, Building Permit No. B-143207 to "Cut opening in wall for door, change noted on original plans."
- (g) May 20, 1966, Permit No. B-130262 to "Replace three bath tubs, three water closets, three basins, and three sinks and three gas ranges, and one washing machine drain."
- (h) July 20, 1966, Permit No. B-220976 for "60 outlets, 10 fixtures (9 inside, 1 outside), 1 dryer, 1 disposal, 3 100 amp switches."
- (i) October 24, 1966, letter to the Zoning Administrator from the Chief, Plumbing and Refrigeration Section, stating that his examination indicates that the subject premises contained a 3 fixture bathroom legally installed in the basement in 1950.
- (j) November 8, 1966, Certificate of Occupancy No. B-56387 for an apartment house.
- (k) November 1, 1966, License No. 02978 for an apartment house valid to October 31, 1967.

(8) The present owners purchased the property in April, 1966 and asserted that they have expended approximately \$19,000 improving the property prior to the challenge to the validity of their permits and occupancy.

(9) A statement of the present owners (Exhibit No. 16) asserts that the property was purchased on the belief that the building could be used as an apartment house and that it was in fact being used as an apartment house.

(10) The Society submitted five (5) affidavits from neighbors in the area of the subject property. These affidavits purport to relate the facts as to the occupancy of the premises. Two of the affidavits are presented by persons who had occasion to go through the subject premises. These documents represent that the premises have not been used as an apartment house.

(11) The property owners submitted an affidavit (Exhibit No. 45a) from the plumbing supervisor and plumber who remodelled the subject premises. That document avers that the property was inspected on May 3, 1966, and found to have existing in the basement -- a complete bathroom and a kitchen; on the first floor -- a complete bathroom, and the following with respect to a kitchen: a 1/2 inch waste pipe, and 1/2 inch water lines, a previous sink had been removed, a 3/4 inch gas pipe line; on the second floor -- a 3-piece bathroom and a complete kitchen.

(12) The record contains a petition (Exhibit No. 38) signed by ten (10) residents of the area opposing "any approval and issuance of an occupancy permit \* \* \* or its granting of a zoning variance to permit or enable the said premises \* \* \* to be converted to, or used as, a three-apartment unit or multiple-unit dwelling as being inconsistent with and detrimental to the preservation, maintenance and character of our residential community."

(13) The Capitol Hill Southeast Citizens Association also opposes the ruling of the Zoning Administrator.

(14) Section 8104.6 of the Zoning Regulations provides that: "Any use of a structure or land or part thereof for which a certificate of occupancy has been issued before the effective date of these regulations may be continued or established in accordance with the terms of such certificate of occupancy."

(15) Section 3104 of the regulations permits an apartment house in an R-4 District as a matter of right (Section 3104.33).

(16) The subject property was zoned Residential 60-foot C under the regulations existing prior to 1958. Those regulations permitted an apartment house in the cited district as a matter of right.

OPINION:

We are of the opinion that the Zoning Administrator's ruling must be upheld. The evidence of record in this case is conflicting as to the use of the subject premises as an apartment house. The Zoning Regulations, both at the time of the 1946 certificate of occupancy and the present, permit an apartment house as a matter of right in the zoning district in which the subject property is located.

We find that the property is not subject to the nonconforming use sections of the Zoning Regulations, and therefore, the question of abandonment has no applicability. The property was conforming, the remodeling of the structure does not change the property to nonconforming, nor does the remodeling constitute a conversion of a single-family dwelling into a multi-family use within the meaning of the regulations.

We hold that the Zoning Administrator may rely on the facts of record. He is bound to determine the last recorded use of the premises. After this determination is made, a certificate of occupancy may be issued to conform to the last recorded use. Under Section 8104.6, the continuance or establishment of a previously established use supported by a certificate of occupancy requires the Zoning Administrator to authorize the requested use. Under that section, it appears that even an interrupted use can be re-established.

In conclusion, the Zoning Administrator's decision is correct and is upheld by the Board. The apartment house use will have no adverse effect upon the present character and future development of the neighborhood and is within the purpose and intent of the Zoning Regulations and Maps.